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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 10, Original

UNITED STATES OF AMERICA,
Plaintiff,

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA and FLORIDA,
Defendants.

JOINT BRIEF FOR THE DEFENDANT STATES ON COMMON QUESTIONS

JACK P. F. GREMILLION
Attorney General, State of Louisiana
Baton Rouge, Louisiana

WILL WILSON
Attorney General, State of Texas
Austin, Texas

JOE T. PATTERSON
Attorney General, State of Mississippi
Jackson, Mississippi

JOHN PATTERSON
Attorney General, State of Alabama
Montgomery, Alabama

RICHARD W. ERVIN
Attorney General, State of Florida
Tallahassee, Florida

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 10, Original

UNITED STATES OF AMERICA,
Plaintiff,

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA and FLORIDA,
Defendants.

JOINT BRIEF FOR THE DEFENDANT STATES ON COMMON QUESTIONS

PRELIMINARY STATEMENT

This is a joint brief of the five States upon certain questions common to all defendant States.

In Point I of the Brief of the United States in Support of Motion for Judgment on Amended Complaint[1] the Government argues that under the Submerged Lands Act the property rights transferred to the defendant States are limited to the national boundary, which the Government asserts has been

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[1] For brevity, that brief will be hereinafter referred to as Government Brief.

three miles from the coast at all relevant times.[1] The States answer that they are entitled by the Act to property rights extending three leagues into the Gulf of Mexico, since the Act uses as its measure of grant the historic boundary of each State rather than the present State boundary or the national boundary.

As indicated in the Government's Brief, Page 5, the "amended complaint states five separate causes of action against the five defendants." Each of the five defendants has separate constitutional provisions or laws defining the boundaries which existed at the time they entered the Union, or which thereafter were approved by the Congress. This being the measure of the property rights transferred to each State by the Submerged Lands Act, each State will file a separate brief with respect thereto and in opposition to the Government's motion for judgment on the pleadings.

The States join in this brief solely for the purpose of opposing the Government's common assertion against all the States that the Submerged Lands Act is limited to a three-mile national boundary or a three-mile belt of territorial waters. This is for the convenience of the Court and for the purpose of orderly presentation by the States of their argument in opposition to this one common point asserted by the Government against all of the States. By this action the States do not waive any separate defense urged in their pleadings or any applications for severance, the appointment of a master to take evidence, or any other separate right heretofore or hereafter asserted.

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[1] Government Brief, 27-151

SUMMARY OF ARGUMENT

I.

The argument under Point I in the Government's Brief is an attempt to transform a domestic controversy over property rights into an international question to be controlled by foreign policy. The Government seeks to accomplish this metamorphosis by substituting "the national boundary" for the States' original and historic "boundaries" as defined in the Submerged Lands Act as the outer limit of the property rights transferred by the Act. The Government's argument is contrary to the intent of the Submerged Lands Act as disclosed by its words and its legislative history. If accepted by this Court the Government's contention would have the effect of nullifying a major purpose of the Congress and the President in passing and approving the Submerged Lands Act.

The Submerged Lands Act is a valid exercise by the Congress of its power to dispose of property belonging to the United States. This Congressional power is not limited to property within a three-mile national maritime boundary, and its exercise was not intended to be so limited in the Submerged Lands Act. The measure of the property rights vested in the States by the Act is the States' "boundaries" as defined in the Act. The States' "boundaries" so defined are the States' boundaries as they existed at the time the respective States became members of the Union, or as approved by the Congress before the passage of the Submerged Lands

Act. The outer limit of the transfer, however, is limited by the Act to three leagues from the coast into the Gulf of Mexico. Neither a national boundary nor the limit of territorial waters is mentioned in the Act as the measure of the area in the Gulf of Mexico covered by the Act. The issue presented here can therefore be determined without reference to the location of a national maritime boundary.

The transfer to the States of title and ownership and the right to develop the seabed and natural resources out to three leagues from the coast in the Gulf of Mexico does not conflict with the foreign policy of the United States. It is an apportionment by the Congress between the States and the Federal Government of the property rights which the United States asserts in the continental shelf, and that apportionment is a wholly domestic matter.

The Submerged Lands Act does not require that the States' "boundaries" at the relevant times should have been consistent with the foreign policy of the United States or recognized by international law. The Court therefore need not determine what the foreign policy of the United States or general international law as to maritime boundaries was at the relevant times in order to decide the issues in this case. In so far as the current foreign policy of the United States is involved, it has been determined in favor of the Gulf States by the Congress and the President by passing and approving the Submerged Lands Act. That determination of policy by the political branches of the national government is binding on the parties and the Court.

II.

If international law and a national boundary must be considered in determining the outer limits of the rights transferred to the States by the Act, there is still no three-mile limitation on the transfer to the defendant States. There was no established international law fixing a maximum three-mile seaward boundary at the relevant times, and a distance of three leagues from the coast was then an accepted limit of the territorial sea. Geographically and historically the Gulf of Mexico presents a special situation. The United States during relevant periods recognized and used seaward boundaries in the Gulf of Mexico in excess of three miles.

If the provisions of the Submerged Lands Act relating to State boundaries in excess of three miles in the Gulf of Mexico can be made effective only by construing the Act to be a location by the Congress of a national boundary at least three leagues from the coast in the Gulf of Mexico, then the Act should be so construed in order that these provisions will not be rendered meaningless and void.

ARGUMENT

I.

Under the Submerged Lands Act, the defendant States are entitled to submerged lands and natural resources extending to the States' historic "boundaries" as defined in the Act, and these property rights are not limited to a three-mile maritime belt.

A. The present controversy is a domestic dispute as to the geographical extent of property rights transferred to the States by the Submerged Lands Act, which is an admittedly valid exercise by the Congress of its power to dispose of property of the United States.

It is of primary and paramount importance to bear in mind that this case involves a domestic dispute over property rights. In its amended complaint, the Government seeks a declaration of rights "as against said States in the lands, minerals and other things" underlying the Gulf of Mexico and more than three geographical miles from the coast. (Amended Complaint, 19) The States by their several answers assert property rights extending three leagues from the coast. The question for decision therefore is whether the Submerged Lands Act vested in the States the rights which the United States in this suit claims in the "lands, minerals and other things" in the area in controversy, between three miles and three leagues from the coast into the Gulf of Mexico.

The Government attempts to transform a domestic dispute over property into a matter of foreign policy, involving international questions "of peculiar importance and delicacy." (Amended Complaint, 6) It asserts that "although the present controversy is wholly domestic, national foreign policy must control its decision." (Government Brief, 147)

The States insist that the Submerged Lands Act, when properly construed and applied to the issues in this case, involves a purely domestic matter. The

area within which rights are transferred to the States by the Act does not depend on the breadth of the territorial sea claimed by the United States under international law. The rights of the States in the lands, minerals, and other things in the portion of the continental shelf involved in this case can be decided without reference to any questions of foreign policy or international relations.

The States are supported in their position by the conclusion of the American Law Institute in its Restatement of the Foreign Relations Law of the United States. (Tentative Draft No. 2, May 8, 1958, p. 22) (Emphasis added)

> "d. The Submerged Lands Act of May 22, 1953, 67 Stat. 29, 43 U. S. C. Supp. Sec. 1301 et seq. which gave to certain states of the United States bordering on the Gulf of Mexico title to oil and other resources beneath the waters of the Gulf of Mexico extending nine miles[*] from the coast does not require the United States to change its traditional position regarding the three-mile limit. The resources in question were on the continental shelf and the United States as a national state asserts jurisdiction and control over the resources of the continental shelf not on the basis of territory but under the rule

[*] By "miles" as used in this comment, as in the Submerged Lands Act, is meant geographical mile. A geographical mile is equal to about 1.15 statute miles. A marine league is equal to 3 geographical miles or about 3.45 statute miles. Three leagues are equal to 9 geographical miles or about 10.35 statute miles. In the hearing and debate on the Submerged Lands Act, 3 leagues are sometimes referred to as being about 10 or 10½ statute miles.

described in § 23.[4] *Whether this jurisdiction is exercised by a state of the United States or by the United States itself is purely a domestic matter.*

"The issue was confused by the fact that Sections 2(b) and 4 of the Submerged Lands Act used the term 'boundaries' as a criterion for determining whether a state of the United States bordering on the Gulf of Mexico should exercise the jurisdiction over these resources or whether such jurisdiction should be exercised by the federal government of the United States under the Outer Continental Shelf Lands Act, 67 Stat. 462, 43 U. S. C. Supp. Sec. 1331 et seq. This appeared to put the question on a territorial basis and led to an attack on the constitutionality of the Act on the ground that it permitted some states of the United States to exercise territorial jurisdiction over a nine-mile belt while restricting other states to a three-mile belt, and thus violatied the 'equal footing' clause on which states were admitted to the Union. The decision of the Court upholding the act was placed squarely on the ground that *there was no limitation on the authority of Congress to dispose of property of the United States.* Alabama vs. Texas, 347 U. S. 272 (1954). *Construed in this manner, the act does not depend on the breadth*

[4] "§ 23. Continental Shelf.

A State has jurisdiction to prescribe and to enforce rules concerning the exploration, exploitation and related use of the continental shelf off its coast and beyond the outer limits of its territorial waters, provided such rules do not interfere with the character as high seas of the waters above or with navigation or fishing therein."

of the territorial sea claimed by the United States under international law." [*]

The carefully considered and altogether objective view of the American Law Institute upon the Submerged Lands Act, as construed by this Court in *Alabama vs. Texas*, 347 U. S. 272, shows how far the Government in its advocacy has strayed from the proper construction of the Act by insisting that "although the present controversy is wholly domestic, the principal issue must be decided by reference to national foreign policy." (Government Brief, 16)

The Submerged Lands Act is in truth and in fact an apportionment by the Congress between the States and the Federal Government of property rights in the continental shelf, the States' rights being limited to three leagues from the coast in the Gulf of Mexico. As an apportionment of property rights and of the power of control over the resources of a portion of the seabed, it does not depend upon the breadth of the territorial sea claimed by the United States and

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[*] The Submerged Lands Act has been the subject of careful study by the advisers, the reporters, and the Council of the American Law Institute and has been recognized as legislation which infringes in nowise on the pattern of United States foreign policy in relation to territorial boundaries. The comment quoted above was drafted, discussed and approved by the Council of the American Law Institute for submission to the Institute membership, and at the May, 1958 meeting of the American Law Institute in Washington, said comment, in the identical form quoted, was accepted by the American Law Institute membership without disagreement. While the tentative draft in question has not been finally adopted by the American Law Institute in its entirety, the above comment presumably now reflects the considered views of the American Law Institute experts, advisers, reporters, and members.

therefore does not in any way conflict with the traditional foreign policy of the United States in support of freedom of the seas or otherwise.

The Government quotes in its brief (pp. 114-115) from the "Convention on the Continental Shelf" [9] presumably as a correct statement of international law and United States foreign policy. This convention (Art. 2, par. 1) declares that a "coastal State exercises over the continental shelf *sovereign rights* for the purpose of exploring and exploiting its natural resources," and (Art. 2, par. 2) that such rights "are *exclusive* in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities, or make a claim to the continental shelf, without the express consent of the coastal State." (Emphasis added)

Under this convention, the United States' sovereign rights to explore and exploit the natural resources in the adjacent continental shelf in the Gulf of Mexico are complete and exclusive and do not in any way depend upon whether a national boundary limiting territorial waters in the Gulf of Mexico is three miles or three leagues from the coast. Only the United States or its agents or transferees may explore and exploit these natural resources, wherever the limit of territorial waters may be. The extent to which these rights have been transferred to the States is purely a domestic question that does not relate to foreign policy, because foreign nations have no claim to the rights here in issue.

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[9] A/ CONF. 13/ L. 55, 28 April 1958.

It is not the purpose of the States to attempt to relitigate *United States vs. California*, 332 U.S. 19, *United States vs. Louisiana*, 339 U.S. 699, or *United States vs. Texas*, 339 U.S. 707. The States depend upon the Submerged Lands Act for the rights which they assert in this case. The Government admits in its Brief that the Submerged Lands Act is a grant of property rights to the States (Government Brief, 30, footnote 2) and is a valid exercise of the power of Congress to dispose of Federal property, under the decision in *Alabama vs. Texas*, 347 U. S. 272. *(Id.*, 35-36) The Solicitor General, representing Federal officials, successfully maintained the validity of the Act in that case and could hardly now contend that the Act is invalid.

The present question, therefore, is, as the Government says in its Brief *(Id.*, 30), "simply one of determining the extent of rights transferred to the States by the Submerged Lands Act." Where the States differ from the Government is in the States' insistence that their rights must be measured by the States' "boundaries," as defined in the Act, and not by some other measure not mentioned in the Act, such as the outer limits of territorial waters as asserted by the present Secretary of State.

It is well to recall the situation that confronted Congress when the Submerged Lands Act was under consideration in 1953. President Truman, by proclamation on September 28, 1945,[1] declared that the United States regards "the natural resources of the subsoil and sea bed of the continental shelf beneath the high seas but contiguous to

[1] Presidential Proclamation No. 2667 (59 Stat. 884).

the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control." This Court in *United States vs. California*, 332 U.S. 19, *United States vs. Louisiana*, 339 U.S. 699, and *United States vs. Texas*, 339 U.S. 707, had decided that the United States has paramount rights in the continental shelf and that the States were not entitled to develop the natural resources of the submerged lands. While the recovery of oil, gas and other natural resources under the management and supervision of the State authorities was therefore brought to a halt, there was no Federal legislation providing a method of orderly development.

Moreover, in the California case *(United States vs. California*, 332 U.S. at 27, 40) this Court had indicated that the situation was one appropriate for congressional action:

> "For Article IV, § 3, Cl. 2 of the Constitution vests in Congress 'Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.' We have said that the constitutional power of Congress in this respect is without limitation. United States v. City and County of San Francisco, 310 U. S. 16, 29-30. Thus neither the courts nor the executive agencies, could proceed contrary to an Act of Congress in this congressional area of national power.
>
> ". . .
>
> "But beyond all this we cannot and do not assume that Congress, which has constitutional control over Government property, will execute

its powers in such way as to bring about injustices to states, their subdivisions, or persons acting pursuant to their permission."

While opinions differed as to the action which Congress should take, there was general agreement that legislation was required. Addressing the House Committee on the Judiciary (House Judiciary Committee, Subcommittee No. 1, Hearings on H. R. 2948, 83rd Cong., 1st Sess., 218), Attorney General Brownell recommended that Congress should by legislation resolve the submerged lands issue "so that the long stalemate may be ended and the exploration and development of the mineral resources of the Continental Shelf may again go forward for the welfare of the country."

Carrying his suggestion farther, Attorney General Brownell pointed out that in his opinion under the decisions of this Court it was up to Congress to say what division should be made between the States and the Federal Government in the development of the submerged lands: (*Id.*, 224)

> "I would point out that the Supreme Court itself in its own decision made it pretty clear that it was up to Congress to decide what to grant the States from its paramount rights. That is exactly the purpose of this legislation, as I understand it. The Congress has the discretion, the authority, and the power to draw the line."

In his appearance before the Senate Committee on Interior and Insular Affairs, Mr. McKay, Secre-

tary of the Interior, stated the general problem and his recommendation as follows: (Senate Interior Committee Hearings on S. J. Res. 13, 83rd Cong. 1st Sess., 511-512)

> "Secretary McKay. Mr. Chairman and gentlemen of the committee, the Congress has before it a fundamental question of national policy involving the ownership of and the production of minerals from the offshore submerged lands of the United States.
>
> "This has been a controversial problem for a number of years.
>
> ". . .
>
> "I do believe that the national interest would be best served by restoring to the various States the coastal offshore lands to the limits of the line marked by the historical boundaries of each of the respective States."

In explaining the necessity for congressional action Congressman Reed of Illinois, the Chairman of the House Committee on Judiciary, said in the debate on H. R. 4198: (99 Cong. Rec. 2500)

> "No one questions the potentiality of the resources located in these areas, but since the decisions of the Supreme Court in the California, Louisiana, and Texas cases, exploration and development have come to almost a complete halt. No new wells are being brought in nor are they being sought.
>
> "This intolerable situation is further complicated by the fact — and this is admitted by everyone — that there is no statutory authority

for any Federal Agency or office whereby these areas may be administered, leases issued, and production set in motion.

"Congress and only the Congress can establish such authority by legislation. It is our responsibility to take — here and now — the necessary steps to terminate this stalemate. The passage of this bill in my judgment is a proper and equitable solution of the present jurisdictional uncertainty and will be in the best interests of the States and the Federal Government."

It was with the purpose of settling a long standing controversy,[8] which all conceded that only Congress could satisfactorily determine, that Congress approached the problem of the division between the State and Federal Governments of the ownership, management, and control of the submerged lands and the natural resources therein. The method used was to allocate the States rights up to their historic

[8] The public announcement of hearings on the submerged lands bills, to be held before the Senate Committee, contained the following statements by Senator Cordon, who acted as chairman: (Senate Interior Committee Hearing on S. J. Res. 13, 83rd Cong. 1st Sess., 2)

". . . as I am certain every interested person knows, the submerged-lands issue has been debated in successive Congresses for just about the past 16 years—since 1937, in fact. Some 13 or more full-scale hearings have been held, and more than 6,000 pages of testimony and exhibits presented. All of this vast amount of material is before the committee and will be incorporated by reference into the record before the 83rd Congress. In addition, the basic issues of State versus Federal control over the submerged lands within historic State boundaries was debated widely in the recent presidential campaign. All of the basic facts are well known, both by the Members of the Congress and by the public."

boundaries, according to the definitions of those boundaries, which we shall discuss in the next succeeding section of this brief.

B. The outer limits in the Gulf of Mexico of the area within which property rights are transferred by the Submerged Lands Act are the boundaries of the respective States as they existed at the time they became members of the Union, or as approved by the Congress before the passage of the Submerged Lands Act, and extending not more than three leagues from the coast. These outer limits are not dependent upon the location of a national maritime boundary or the extent of territorial waters.

1. *The terms of the Submerged Lands Act.*

Throughout the Submerged Lands Act, the measure of the property rights transferred is each *State's* historic boundaries and not a national boundary or the extent of territorial waters.

The title (67 Stat. 29) provides that it is an act to confirm and establish the titles of the States to lands beneath navigable waters "within *State* boundaries," and to confirm the jurisdiction and control of the United States over the resources of the continental shelf "seaward of *State* boundaries." (emphasis added)

Section 3, paragraph (a) (67 Stat. 30, 43 U. S. C. Supp. V, 1311), recognizes, confirms, establishes, and vests in and assigns to the respective States title to and ownership of "lands beneath

navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters, and the right and power to manage, administer, lease, develop, and use said lands and natural resources all in accordance with applicable State law . . ."

Section 2, paragraph (a) (2) (67 Stat. 29, 43 U. S. C. Supp. V, 1301) defines "lands beneath navigable waters" to include all lands covered by tidal waters seaward

> "to the boundary line of each such State where in any case such boundary as it existed at the time such State became a member of the Union, or as heretofore approved by Congress, extends seaward (or into the Gulf of Mexico) beyond three geographical miles, . . ."

Section 2, pargraph (b) (67 Stat. 29, 43 U S. C. Supp. V, 1301) defines "boundaries" to include a State's

> "boundaries in the Gulf of Mexico . . . as they existed at the time such State became a member of the Union, or as heretofore approved by the Congress, or as extended or confirmed pursuant to Section 4 hereof, but in no event shall the term 'boundaries' or the term 'lands beneath navigable waters' be interpreted as extending from the coast line . . . more than three marine leagues into the Gulf of Mexico . . ."

Section 4 (67 Stat. 31, 43 U. S. C., Supp. V, 1312) confirms the seaward boundary of States out to three miles from the coast under certain conditions